

# Supreme Court sides with expanded protections for child sexual abuse survivors regarding notices of claim

The New Jersey Supreme Court agreed with arguments advanced by the New Jersey State Bar Association (NJSBA) and held that amendments to the Child Sexual Assault Act (CSAA) dispensing of the requirement to file a Tort Claims Act (TCA) notice within 90 days applied where the cause of action accrued earlier than the effective date of the amendments to the law. In *W.S. v. Hildreth*, the Court found in favor of the plaintiff, whose cause of action accrued in 2016. The defendant's motion to dismiss was denied, which decision was affirmed by the Appellate Division.

The holding was consistent with the Association's position sought in its *amicus curiae* brief arguing that the sweeping changes in the statute should be applied here because that was the intent of the changes in the law.

Basing its decision on the plain language of the statute, the Court opined that not applying the statute to cases predating the effective date of the amendments "would lead to absurd results." Finding that the purpose of the amendments "was to greatly increase the ability of victims of sexual abuse to pursue justice through the court system," the Court dispensed of the argument that such a reading would expose the "State, school, districts, and local units of government to civil claims that may result in substantial judgments against affected governments."

"However, in defendants' view, only those subjected to sexual abuse by a public entity or employee after December 1, 2019, or whose cause of action for such abuse accrued after

December 1, 2019, would be able to pursue justice in court," said the Court in its unanimous opinion, the first penned by Justice Rachel Wainer Apter.



## CAPITOL REPORT

"For everyone else, the Legislature would have intentionally resuscitated child sexual abuse claims against public entities or employees that accrued many years before by retroactively extending the statute of limitations until the victim reached age fifty-five through *N.J.S.A. 2A:14-2a(a)(1)*, only for the claim to be immediately dismissed because the victim did not file a notice of claim within ninety days of the cause of action originally accruing. That would be senseless."

The NJSBA similarly argued this point: "In the face of crystal-clear intent to pass a statute that opens the door to all victims of sexual assault to bring claims against entities, public and private for civil redress: was there any legislative intent to deny a class of victims such as W.S. the right to proceed based upon prior tort claim notice requirements? Because such denial would be clearly irreconcilable with the language of the statutes and the legislative history; and would further result in unsubstantiated denials of access to civil justice to otherwise similarly-situated victims, the answer must be no."

The brief was authored by former NJSBA Trustee Craig J. Hubert and current Trustee Thomas J. Manzo. The matter was argued by Hubert.

and potential buyer offered significantly more money on the property. The cancellation was never put in writing during the three-day period. The NJSBA took no position on the facts in this matter but argued that if the parties could prove actual notice, the contract should be invalidated.

Relying on *Conley v. Guerrero*, the NJSBA said: "The *Conley* decision reflects the Court's sentiment in approving the Attorney Review Clause that courts retain the power to address, 'questions of the interpretation, application, and general adherence to or enforcement of the settlement that may arise and affect the public interest in the most appropriate manner under the given circumstances.'" The brief quotes an earlier matter in which the NJSBA was a party—*New Jersey State Bar Ass'n v. New Jersey Ass'n of Realtor Boards*, 93 N.J. 470, 474, modified, 94 N.J. 449 (1983). The NJSBA eventually entered into a settlement that led to the three-day attorney review period in existence today.

The NJSBA continues to monitor the matter.

### NJSBA argues to maintain attorney review clause protections in Appellate Division challenge

Stopping short of urging an expansion of the Attorney Review Clause in residential real estate contracts, the NJSBA argued that the strong consumer protection purpose underlying the clause should prevail to allow oral disapproval of the contract to be effective if the proponent can prove that all parties received actual notice. While acknowledging that oral disapproval is not the favored course, the NJSBA noted in its brief that form should not be elevated over substance when interpreting and enforcing the Attorney Review Clause.

The NJSBA appeared as *amicus curiae* in *Fitzpatrick v. Qasim*, which was the subject of oral argument before the Appellate Division last week. NJSBA members F. Bradford Batcha and Matthew J. Schiller authored the brief and Batcha argued the case before the Appellate Division.

The matter emanates from a real estate transaction in which the parties agreed to a price, which was later canceled by a telephone call after a sec-

*This is a status report provided by the New Jersey State Bar Association on recently passed and pending legislation, regulations, gubernatorial nominations and/or appointments of interest to lawyers, as well as the involvement of the NJSBA as amicus in appellate court matters. To learn more, visit njsba.com.*

## NJSBA Board of Trustees takes action in January meeting

The New Jersey State Bar Association's Board of Trustees supported the following bills in the state Legislature at its January meeting.

A1746 McKeon / S2947 Pou—a bill that brings New Jersey's stringent loan

regulations between insurers and home loan banks in line with more relaxed federal standards. The bill would allow federal home loan banks to offer more favorable lending terms to New Jersey insurance companies.

S3125 Cryan / A4947 Lopez—a measure that expands "Daniel's Law" to prohibit the disclosure of personal information concerning child protective investigators. The bill expands the scope of Daniel's Law, which currently

protects the personal information of certain public officials who serve in the criminal and civil justice systems. ■

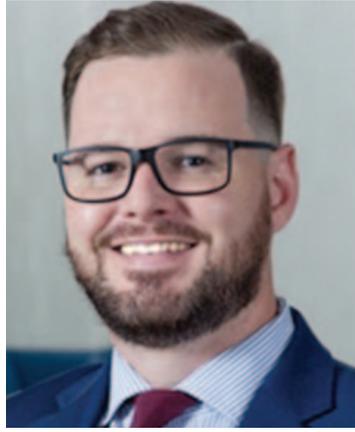
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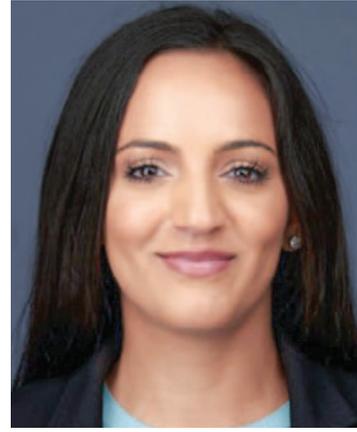
Mallory Garvin



Jaden Jackson



Dillon J. McGuire



Alexis Mitchell



Kiah Murphy



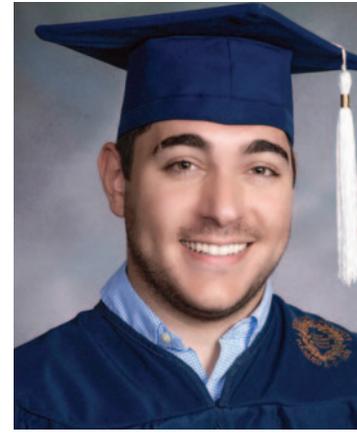
Kaitlin R. Principato



Erin N. Romano



Sarah Souaid



Emre Tutuncu

# Dedicated to service: Get to know the NJSBA Pro Bono Award winners for 2022

On Feb. 15, the NJSBA will recognize 20 individuals across six award categories for their outstanding commitment to providing pro bono legal services to New Jersey's underserved residents. Hear from two of the recipients—Dillon J. McGuire and two teams of Seton Hall law students—on their awarding-winning pro bono efforts.

*Editor's note: This is the final article in a series featuring this year's award recipients. The responses have been lightly edited.*

## **Dillon J. McGuire—Distinguished New Lawyer Pro Bono Award**

The Distinguished Attorney Award recognizes an attorney in practice for 10 years or fewer. McGuire specializes in criminal defense and government and internal investigations with Pashman Stein Walder Hayden. In 2021, he argued before the state Supreme Court on behalf of the Association of Criminal Defense Attorneys—New Jersey on a pro bono basis in multiple cases involving the constitutionality of life sentences for juvenile defendants.

## **What do you find most rewarding about pro bono advocacy, especially in the criminal defense space?**

After my judicial clerkships, it was very important to me to land at a law firm with a dedication to public interest work. When I heard about Pashman Stein Walder Hayden, and the Jus-

tice Gary S. Stein Public Interest Center, it immediately caught my attention. I think what I enjoy most about pro bono advocacy in the criminal arena is that our involvement in high-impact litigation before the Appellate Division and Supreme Court can make an immediate difference in the lives of New Jersey residents. Far too often, defendants' constitutional rights are cast aside by investigating officers, yet these officers routinely receive the benefit of the doubt from trial judges. In appropriate cases, our role as *amici* provides critical support for defense counsel and assists the Court in determining some of the broader policy implications of a particular case.

## **Why do you believe it's important for young attorneys like yourself to take on pro bono work?**

It's extremely important for young attorneys to be involved in pro bono work. For me, pro bono assignments through the Justice Gary S. Stein Public Interest Center provided me with two invaluable opportunities. First, fighting for those who cannot fight for themselves is what attracted me to the practice of law in the first place. This is especially true in the criminal context, as an individual charged with a crime must defend themselves against the seemingly unlimited resources of the state. The opportunity to represent defendants as designated counsel for

the state Office of the Public Defender in direct appeals has been particularly rewarding for me, as it allows more personal interaction with the defendants themselves. Second, pro bono work allowed me to get into court almost immediately and sharpen my oral and written advocacy skills while arguing as *amicus*.

## **Seton Hall Law Student Teams—Outstanding Law Student Pro Bono Awards**

This award recognizes an individual law student or students who excelled in supporting pro bono or legal aid programs for underserved communities. A group of nine current and former Seton Hall Law students will receive the award for developing a series of informational videos for survivors of domestic and sexual violence, who represented themselves in restraining order hearings. The recipients are Erin N. Romano, Sarah Souaid, Mallory E. Garvin, Emre Tutuncu, Kaitlin R. Principato, Jaden W. Jackson, Brian M. Smith, Kiah B. Murphy and Alexis Mitchell.

## **What interested you in performing pro bono service while still a law student?**

I had the lifetime honor of being a student in the Leadership Fellows Program for the Class of 2022. This pro bono program was established and has since been led every year by Professor Paula Franzese, a person nationally

recognized for her legal eminence in housing justice and her passion for inspiring servant leadership in her students. She always told us, "There's a force that meets good with good," and advised us not to wait for someone else to do good, but be the person that meets every problem with a viable solution. Our final projects included pro bono services ranging from a coat drive to the video advocacy project for survivors of domestic abuse in obtaining necessary protection. We all leaned into the program and inspired change that will continue to inspire change.

—Alexis Mitchell

## **How has the experience helped prepare you for a career in the law?**

As anticipated, a project of this magnitude presented a multitude of challenges that cultivated a greater understanding of collaboration and leadership. Learning how to effectively work with classmates, professors and legal professionals was a lesson in patience, communication and grace. Additionally, I have seen improvement in my organizational and management skills. I am more confident in my decision-making ability. Moreover, I have developed a deeper sense of empathy and compassion for others. Perhaps the greatest reward, however, was the bond I formed with my colleagues throughout this process.

—Jaden W. Jackson ■